

1 KRISTIN K. MAYES
2 Attorney General of Arizona
3 (Firm State Bar No. 14000)
4 Alyse Meislik (AZ Bar 024052)
5 Dylan Jones (AZ Bar No. 034185)
6 Office of the Arizona Attorney General
7 2005 North Central Avenue
8 Phoenix, AZ 85004
9 Phone: (602) 542-3725
10 Fax: (602) 542-4377
11 consumer@azag.gov
12 *Lead Counsel for Plaintiffs*

13
14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE DISTRICT OF ARIZONA**
16

17 State of Arizona, *ex rel.* Kristin K. Mayes,
18 Attorney General, *et al.*,
19 Plaintiffs,
20 v.
21 Michael D. Lansky, L.L.C., dba Avid
22 Telecom; et al.,
23 Defendants.

No.: CV-23-00233-TUC-CKJ

**PLAINTIFFS' CASE
MANAGEMENT PLAN**

24 Pursuant to this Court's August 22, 2024 Order [Dkt 84], Plaintiffs submit the
25 following case management plan outlining the Plaintiffs' intended discovery, its necessary
26 scope and time constraints.

27 The Lead Plaintiff States in this matter are counsel for the Plaintiff States of Arizona,
28 Indiana, North Carolina, and Ohio. The Lead Plaintiff States represent the position of all
Plaintiff States.

1 **I. NATURE OF THE CASE AND BASES OF CLAIMS**

2 Plaintiffs filed this action against Michael D. Lansky, L.L.C., dba Avid Telecom
3 (Defendant Avid Telecom), Michael D. Lansky, individually and as Chief Executive Officer
4 (Defendant Lansky), and Stacey Reeves, individually and as Vice President of Operations
5 and Sales, (collectively “Defendants”). All Plaintiffs joined Counts I through V of the
6 Complaint, which alleged violations of the Telemarketing Sales Rule (“TSR”), 16 C.F.R. §
7 310 *et seq.*; the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.* and
8 its implementing rule, 47 C.F.R. § 64.1200; the Truth in Caller ID Act (“TCIA”), 47 U.S.C.
9 § 227(e) and its implementing rule, 47 C.F.R. § 64.1604. Eleven Plaintiffs alleged violations
10 of certain state laws that protect consumers against unfair and deceptive trade practices,
11 including unfair, deceptive, abusive and illegal telemarketing practices. Plaintiffs previously
12 outlined the nature of the case, the specific counts and the elements of proof for each count
13 in the Parties’ Joint Rule 26(f) Report [Dkt. 79, 79-1].

14 **II. PLAINTIFF’S GENERAL PLAN FOR DISCOVERY**

15 Plaintiffs intend to seek discovery from parties, non-parties and experts on all topics
16 identified in the Complaint and any applicable defenses asserted by Defendants. Plaintiffs
17 will only seek discovery that is proportional to the needs of the case as required by Fed. R.
18 Civ. P. 26(b)(1). The discovery relevant to the federal claims, Counts I through V, will
19 largely be the same for all Plaintiffs as to the Defendants’ business practices, conduct and
20 knowledge or deliberate ignorance of the illegal robocalls at issue. The discovery needed for
21 the federal claims will also be relevant to many of the state law claims alleged. Some of the
22 state law counts can be proven, in whole or part, upon a finding of a violation of the federal
23 counts or supported by substantially similar evidence. Additionally, a small group of the
24 Plaintiff States were responsible for the pre-litigation investigative work and the preliminary
25 analysis of the call detail records for the benefit of all Plaintiffs.

26 Plaintiffs intend to retain several shared experts who can review case facts and
27 provide industry perspectives as to reasonableness and effectiveness of Defendants’ call
28 traffic analytics, robocall mitigation practices and use of resources and/or tools available to

1 voice service providers. The experts will also analyze Defendants' call traffic and describe
2 the nature and number of violative calls that terminated to residents in each of the Plaintiff
3 states. At the present time, Plaintiffs anticipate seeking fact discovery from the following
4 industry experts who may also be retained as shared expert witnesses on the following
5 subjects:

6 **A.** YouMail, Inc. – YouMail provides registered subscribers with telephone
7 privacy enhancement services including but not limited to: third-party voicemail, call
8 handling and spam call blocking services. YouMail will offer general conduct analyses
9 including but not limited to review of the Defendants' call detail records which may reveal
10 patterns or trends indicative of robocalling or spoofing, a comparison of Defendants' call
11 detail records to voicemail recordings YouMail maintains for registered users of its call
12 blocking and voicemails services or to YouMail's honeypot numbers to determine if
13 YouMail captured recordings which illustrate the potentially violative content of calls
14 facilitated by Defendants, and a comparison of Defendants' call detail records to consumer
15 complaints. This expert witness will offer evidence on the nature of the call traffic and the
16 numbers of violative calls that terminated to registered users associated with each of the
17 Plaintiffs' states.

18 **B.** Industry Expert – Plaintiffs anticipate identifying an expert witness who can
19 provide industry information regarding data sources and/or tools available to voice service
20 providers to identify cellular and other line types associated with telephone numbers and
21 provide an analysis of Defendants' call detail records as to the respective line types for call
22 recipients who received calls at issue.

23 **C.** Data Analyst/Data Scientist – Plaintiffs may retain a witness with expertise in
24 analyzing large data sets, performing statistical analysis and building statistical models who
25 may offer statistical findings related to Defendants' call traffic through an analysis of call
26 detail records.

1 **III. PLAINTIFF’S INTENDED DISCOVERY**

2 Plaintiffs intend to seek the following discovery on the follow topics from select individuals
3 and/or entities listed below.

4 **A. Consumer Witnesses Who Received Calls at Issue**

5 Consumers and/or residents of Plaintiffs’ states (collectively, “Consumers”) who
6 received telephone calls that were initiated, transmitted or facilitated by Defendants, have
7 discoverable information that Plaintiffs may use to support their claims, including, but not
8 limited to, whether the calls initiated, transmitted or facilitated by Defendants were
9 answered, whether the call delivered a prerecorded or artificial voice message, the nature or
10 content of any such message, and whether the consumers provided prior express consent to
11 be called by the calling party.

12 Plaintiffs intend to identify and produce consumer complaints filed in the Federal
13 Trade Commission’s Consumer Sentinel Database or with Plaintiffs directly regarding calls
14 facilitated by Defendants. Plaintiffs anticipate identifying only those consumer complaints
15 that have indicia of trustworthiness because the consumer’s complaint was filed at or near
16 the time a call to that consumer’s telephone number appears in call detail records. Plaintiffs
17 intend to seek admission of consumer complaints under the residual exception to the hearsay
18 Rule 807 of the Federal Rules of Evidence for complaints the meet the criteria.¹ Plaintiffs
19 anticipate taking some affirmative depositions of consumer witnesses, the quantity of which
20 may depend on how the Court rules on the admissibility of the consumer complaints or
21 whether parties can reach agreement and stipulate to the admissibility of consumer
22 complaints. If consumer complaints are ruled as inadmissible, Plaintiffs may seek to increase
23 the quantity of depositions for consumer witnesses.

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28 ¹ See *F.T.C. v. Figgie Intern., Inc.*, 994 F.2d 595, 608 (9th Cir. 1993); *United States v. Dish Network, LLC.*, 75 F. Supp. 3d 942, 967, 2014 U.S. Dist. LEXIS 172020 (C.D. Ill. Dec. 12, 2014).

B. Witnesses with Knowledge of Defendants' Business Practices and Individuals Associated with Entities Related to Defendants

Plaintiffs intend to seek discovery on the following topics: the Defendants' business operations, interactions with their customers/vendors, marketing practices, know-your-customer policies and implementation of such policies, customer onboarding procedures, terms of service and whether the terms and rates vary on a per-customer/vendor basis, whether the know-your-customer policies and terms of service are implemented similarly with pre-pay or post-pay customers, how policies and expectations regarding short duration traffic are relayed to customers/vendors and enforced, standards relayed for monitoring customers'/vendors' call traffic, robocall mitigation policies and the implementation and effectiveness of those policies to prevent or mitigate illegal robocalls from transiting Defendants' network, the relationships among Defendants, Defendants' accounting practices, payments to/from customers/vendors on accounts, compensation to individual Defendants, the extent of each individual Defendant's personal participation and control and/or knowledge of the corporate Defendant's business operations and practices, and Defendants' interactions with law enforcement and regulatory authorities, as well as third-party telecommunications industry entities. Plaintiffs intend to seek discovery from sources including but not limited to:

1. Defendants and Individuals associated with corporations, partnerships, and other entities owned or controlled by, or formerly owned or controlled by Defendants, and current and former officers, owners, managers, trustees, agents or beneficiaries of such entities likely to have discoverable information that Plaintiffs may use to support their claims.

2. Current or former employees, agents and independent contractors of Defendants and entities currently or formerly owned or controlled by Defendants.

3. Investigations, Litigation, Orders, Government Filings by Defendants and Enforcement Actions Related to Defendants' Vendors/Customers to support their claims, if the actions allege violations of federal or state telemarketing laws that are

1 substantially similar to the allegations in the present case and the calls at issue were
2 initiated, transmitted or facilitated by Defendants. Plaintiffs are aware of at least 32
3 of Defendants' customers/vendors that have been subject to actions by the Federal
4 Trade Commission, the Federal Communications Commission and select Plaintiffs.

5 4. Entities that are Defendants' customers/vendors, including retail (end-
6 user) customers to whom Defendants provided voice services and/or number
7 resources to enable the customer to originate calls that may be at issue in this case or
8 vendors (other voice service providers) from which or to which Defendants may have
9 accepted, transmitted or facilitated call traffic at issue and/or provided other services
10 such as numbering resources. Plaintiffs are aware of over 85 such entities. Plaintiffs
11 will focus their discovery on customers/vendors that used Defendants' services to
12 send high volumes of illegal robocalls, or that received such call traffic from
13 Defendants and warned or notified Defendants of illegal or suspect traffic or
14 complained about such call traffic.

15 5. Entities with which Defendants contracted to receive soft switch
16 services or other services used to provide VoIP services to Defendants'
17 customers/vendors, and to which Defendants claim to have paid annual fees of over
18 \$400,000 for robocall mitigation solutions.

19 6. Defendants' attorneys may have non-privileged information related to
20 litigation involving Defendants, including third parties and their attorneys that
21 Defendants Lansky and Avid were litigating against in *4:22-cv-00558-JCH* (Dist.
22 Ariz.) and *1:22-cv-04829-SEG* (N. Dist. Ga.), and these third parties' employees and
23 agents are likely to have discoverable information that Plaintiffs may use to support
24 their claims.

25 7. Financial institutions, payment processors and money transfer and/or
26 currency exchange brokers used by Defendants to effectuate sales or transfer
27 payments and/or assets, are likely to have discoverable information that Plaintiffs may
28 use to support their claims, including, but not limited to, information about

1 Defendants' financial operations, method and manner customers or vendors used to
2 make payments to Defendants, Defendants' respective assets and liabilities, and the
3 financial relationship between the corporate Defendant and each individual
4 Defendant.

5 8. Employees and contractors who work for the Industry Traceback Group
6 (ITG) led by USTelecom Broadband Association are likely to have discoverable
7 information that Plaintiffs may use to support their claims. In addition to topics
8 referenced above, Plaintiffs intend to seek discovery on industry standard practices
9 for operations of voice service providers, information about telephone calls initiated,
10 transmitted or facilitated by the Defendants which were the subject of tracebacks by
11 the ITG, Defendants' interactions with the ITG, Defendants' interactions with their
12 customers/vendors regarding tracebacks, notifications provided to Defendants
13 regarding illegal or suspected illegal robocalls.

14 9. Certain companies that offer third party voicemail, call handling and
15 spam call-blocking services to registered telephone subscribers are likely to have
16 discoverable information that Plaintiffs may use to support their claims. The topics
17 will include but are not limited to the operation of the service and features offered to
18 registered users to enhance telephone privacy such as customized voicemail, call
19 handling and spam call-blocking services, the terms and conditions of services, trends
20 and statistics of call analytics and audio recordings captured by services some of
21 which may be calls initiated, transmitted or facilitated by the Defendants at issue in
22 this case.

23 **C. Discovery Related to State Law Claims of Certain Plaintiffs**

24 Eleven Plaintiff States alleged violations of certain state laws that protect consumers
25 against unfair and deceptive trade practices, including unfair, deceptive, abusive and illegal
26 telemarketing practices. Due to the similarities between the elements of the federal and state
27 counts, Plaintiffs anticipate that those eleven states will likely need minimal, if any,
28 additional discovery.

D. Discovery Related to Defendants' Defenses

In their Amended Answer [Dkt 85 at 173-177] filed September 6, 2024, Defendants identified 14 affirmative defenses and reserved the right to assert additional affirmative defenses as the case proceeds. Defendants' Exhibit B [Dkt 79-2] to the Parties' Joint Rule 26(f) Report [Dkt 79] filed on August 15, 2024, indicated that Defendants intended to withdraw 6 of the 14 defenses, however those 6 were still included in the later filed pleading. As the Defendants' position is not clear, Plaintiffs intend to seek discovery on all defenses identified in the Amended Answer.

IV. PLAINTIFFS' PROPOSED MODIFICATIONS TO DISCOVERY LIMITATIONS

Parties exchanged their initial Fed. R. Civ. P. 26(a)(1) disclosures and filed the Notice of Initial Disclosure on September 6, 2024. The parties discussed changes to the limitations on discovery imposed by Fed. R. Civ. P. 26(b)(2) and were not able to reach an agreement.

A. Interrogatories: At this time, Plaintiffs do not request any modification to the number of interrogatories allowed under Fed. R. Civ. 33. The Plaintiffs may seek an expansion of interrogatory limitations through later stipulation of the parties or motion to the Court as necessary.

B. Depositions: The Plaintiffs propose a modification to Fed. Rule Civ. P. 30 to allow 20 depositions per side. The Plaintiffs do not request any further modification to the limits imposed by Fed. Rule Civ. P. 30. The Plaintiffs intend to conduct depositions including but not limited to the following parties, individuals or entities:

- i. Michael D. Lansky, dba Avid Telecom;
- ii. Michael Lansky;
- iii. Stacey Reeves;
- iv. Ngoc O'Connor – network operations center ("NOC") involved in management of accounts for key upstream customers/vendors;
- v. Kelly Ponzio – NOC involved in management of accounts for key upstream customers/vendors;

- 1 vi. Donna Emmans – bookkeeper, received and credited payment to
- 2 customers;
- 3 vii. Consumer Witnesses – if Court rules that consumer complaints are
- 4 inadmissible under Rule 807 of the Federal Rules of Evidence, Plaintiffs
- 5 will depose a greater number of consumer witnesses which may
- 6 significantly increase the number of depositions needed;
- 7 viii. Other Customers/Vendors;
- 8 ix. Digital Media Solution, LLC, Tony Saldana, General Counsel,
- 9 policies/procedures related to obtaining and maintaining records of prior
- 10 express or prior express written consent from call recipients, preparing and
- 11 scrubbing calling lists, provisioning of DIDs, structure of DMS and its
- 12 affiliates/subsidiaries;
- 13 x. John Spiller;
- 14 xi. Roy Cox/other Sumco individuals;
- 15 xii. SipNav/Scott Presta;
- 16 xiii. Witnesses identified by the Defendants in their initial disclosures;
- 17 xiv. Defendants’ accountant; and
- 18 xv. Defendants’ expert(s).

19 **C.** The parties previously agreed to request the production of electronically stored
 20 information (“ESI”). Plaintiffs believe that ESI should be produced in its native format in
 21 connection with individual discovery requests as set forth in Fed. R. Civ. P. 33 and 34, and
 22 that the parties should confer as to any ESI that requires special consideration. The parties
 23 shall meet and confer regarding any specific ESI needs and disputes before seeking
 24 involvement of the Court.

25 **D.** Two weeks following the Court’s entry of the Case Scheduling Order, the
 26 parties shall submit a proposed protective order for the Court’s review setting forth
 27 procedures governing assertions of privilege or other applicable protection from disclosure.
 28 The parties previously agreed to confer prior to bringing any attorney-client privilege, work

1 product, or other discovery issues or disputes to the Court.

2 **E.** The Plaintiffs propose the following case schedule:

- 3 i. Initial disclosures required by Fed. R. Civ. P. 26(a)(1) were exchanged by
- 4 the parties on September 6, 2024;
- 5 ii. Addition of parties or amending complaint - 60 days following the entry of
- 6 the Case Scheduling Order;
- 7 iii. Completion of Discovery – 9 months following the entry of the Case
- 8 Scheduling Order;
 - 9 • The Plaintiffs believe that, due to the voluminous facts and the
 - 10 complexity of the legal issues in the case as set out in detail above,
 - 11 including the significant number of witnesses, more than 180 days will
 - 12 be needed for discovery.
- 13 iv. Disclosure of initial expert testimony and rebuttal expert testimony
- 14 pursuant to Fed. R. Civ. P. 26(a)(2);
 - 15 • Disclosure of initial expert testimony: 4 months following the entry of
 - 16 the Case Scheduling Order;
 - 17 • Rebuttal Expert Testimony: 45 days following the disclosure of initial
 - 18 expert testimony;
- 19 v. Disclosure of witness list: 21 days prior to trial;
- 20 vi. Filing dispositive motions: 60 days after the close of discovery;
- 21 vii. Filing pre-trial statements: 30 days before trial; and
- 22 viii. Filing of settlement status report: 21 days after the end of discovery.

23 **F.** Plaintiffs anticipate requiring evidentiary hearings, such as a hearing to
 24 exclude unqualified expert or scientific evidence under the *Daubert* standard, to be held
 25 sometime after expert reports are exchanged.

26 Plaintiffs intend to request evidentiary hearings concerning the admissibility of
 27 consumer complaints, as noted above, as well as statements from other third parties under
 28

1 the residual exception of the hearsay rule pursuant to Fed. R. Evid. 807 and of summaries
2 prepared pursuant to Fed. R. Evid. 1006.

3 **G.** The parties anticipate being prepared for trial within 14 months after the entry
4 of the Case Scheduling Order. The Plaintiffs anticipate needing 20 trial days. If the parties
5 can agree to stipulate to the authenticity of records produced by record custodians, and to the
6 admissibility of deposition designations for consumers and some other witnesses, the
7 Plaintiffs believe the estimated length of the trial can be shortened to 10 to 12 days. Each
8 party reserves the right to seek an extension of the trial date based on the progress of
9 discovery, including the cooperation of third-party witnesses.

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RESPECTFULLY SUBMITTED this 27th day of September, 2024.

FOR THE STATE OF ARIZONA:

KRISTIN K. MAYES
Attorney General for the State of Arizona

/s/ Alyse Meislik
ALYSE MEISLIK
DYLAN JONES
Assistant Attorneys General
Attorneys for the State of Arizona

FOR THE STATE OF INDIANA:

TODD ROKITA
Attorney General for the State of Indiana

/s/ Douglas S. Swetnam
DOUGLAS S. SWETNAM
THOMAS L. MARTINDALE
Deputy Attorneys General
Attorneys for the State of Indiana

**FOR THE STATE OF NORTH
CAROLINA:**

JOSHUA H. STEIN
Attorney General for the State of North
Carolina

/s/ Tracy Nayer
TRACY NAYER
ASA C. EDWARDS IV
Special Deputy Attorneys General
DANIELLE WILBURN ALLEN
Assistant Attorney General
Attorneys for the State of North Carolina

FOR THE STATE OF OHIO:

DAVE YOST
Attorney General for the State of Ohio

/s/ Erin B. Leahy
ERIN B. LEAHY
Senior Assistant Attorney General
Attorney for the State of Ohio

Lead Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2024, I caused the foregoing **PLAINTIFFS' CASE MANAGEMENT PLAN** to be filed and served upon Defendants electronically via the Court's CM/ECF system to their counsel of record.

/s/ Alyse Meislik

LIST OF PLAINTIFFS' COUNSEL

| | |
|--|--|
| Alyse Meislik (AZ No. 024052) | Tracy Nayer (NC Bar No. 36964) |
| Dylan Jones (AZ Bar No. 034185) | Asa C. Edwards IV (NC Bar No. 46000) |
| Assistant Attorneys General | Special Deputy Attorneys General |
| Arizona Attorney General's Office | Danielle Wilburn Allen (NC Bar |
| 2005 North Central Avenue | No. 58141) |
| Phoenix, AZ 85004 | Assistant Attorney General |
| Phone: (602) 542-3725 | North Carolina Department of Justice |
| Fax: (602) 542-4377 | Consumer Protection Division |
| consumer@azag.gov | P.O. Box 629 |
| alyse.meislik@azag.gov | Raleigh, North Carolina 27602 |
| <i>Attorneys for Plaintiff State of Arizona</i> | Phone: (919) 716-6000 |
| | Fax: (919) 716-6050 |
| Douglas S. Swetnam (IN Bar No. 15860-49) | tnayer@ncdoj.gov |
| Thomas L. Martindale (IN Bar No. 29706-64) | aedwards@ncdoj.gov |
| Deputy Attorneys General | dwilburnallen@ncdoj.gov |
| Office of the Indiana Attorney General | <i>Attorneys for Plaintiff State of North Carolina</i> |
| Todd Rokita | |
| Indiana Govt. Center South, 5th Fl. | Erin B. Leahy (OH Bar No. 0069509) |
| 302 W. Washington St. | Senior Assistant Attorney General |
| Indianapolis, IN 46204-2770 | Office of Attorney General Dave Yost |
| Phone: (317) 232-6294 (Swetnam) | 30 East Broad Street, 14th Fl. |
| (317) 232-7751 (Martindale) | Columbus, OH 43215 |
| Fax: (317) 232-7979 | Phone: (614) 752-4730 |
| douglas.swetnam@atg.in.gov | Fax: (866) 768-2648 |
| thomas.martindale@atg.in.gov | Erin.Leahy@OhioAGO.gov |
| <i>Attorneys for Plaintiff State of Indiana</i> | <i>Attorney for Plaintiff State of Ohio</i> |

Lead Counsel for Plaintiffs

Lindsay D. Barton (AL Bar No. 1165-G00N)
 Robert D. Tambling (AL Bar No. 6026-N67R)
 Assistant Attorneys General
 Office of the Alabama Attorney General
 501 Washington Avenue
 Montgomery, Alabama 36130
 Phone: (334) 353-2609 (Barton)
 (334) 242-7445 (Tambling)
 Fax: (334) 353-8400
Lindsay.Barton@AlabamaAG.gov
Robert.Tambling@AlabamaAG.gov
Attorneys for Plaintiff State of Alabama

Amanda Wentz (AR Bar No. 2021066)
 Assistant Attorney General
 Office of Attorney General Tim Griffin
 323 Center St., Ste. 200
 Little Rock, AR 72201
 Phone: (501) 682-1178
 Fax: (501) 682-8118
Amanda.wentz@arkansasag.gov
Attorney for Plaintiff State of Arkansas

Nicklas A. Akers (CA Bar No. 211222)
 Senior Assistant Attorney General
 Bernard A. Eskandari (CA Bar No. 244395)
 Supervising Deputy Attorney General
 Timothy D. Lundgren (CA Bar No. 254596)
 Rosailda Perez (CA Bar No. 284646)
 Michelle Burkart (CA Bar No. 234121)
 Deputy Attorneys General
 Office of the California Attorney General
 300 S. Spring St., Suite 1702
 Los Angeles, CA 90013
 Phone: (415) 510-3364 (Akers)
 (213) 269-6348 (Eskandari)
 (213) 269-6355 (Lundgren)
 (213) 269-6612 (Perez)
 (213) 269-6357 (Burkart)
 Fax: (916) 731-2146
nicklas.akers@doj.ca.gov
bernard.eskandari@doj.ca.gov
timothy.lundgren@doj.ca.gov
rosailda.perez@doj.ca.gov
michelle.burkart@doj.ca.gov
Attorneys for Plaintiff People of the State of California

Michel Singer Nelson (CO Bar No. 19779)
 Assistant Attorney General II
 Bianca Feierstein (CO Bar No. 56653)
 Assistant Attorney General
 Colorado Office of the Attorney General
 Ralph L. Carr Judicial Building
 1300 Broadway, 10th Floor
 Denver, CO 80203
 Phone: (720) 508-6220 (Singer Nelson)
 (720) 508-6246 (Feierstein)
michel.singernelson@coag.gov
bianca.feierstein@coag.gov
*Attorneys for Plaintiff State of Colorado,
 ex rel. Philip J. Weiser, Attorney General*

1 Brendan T. Flynn (Fed. Bar No. ct04545,
 2 CT Bar No. 419935)
 3 Assistant Attorney General
 4 Office of the Connecticut Attorney
 5 General William Tong
 6 165 Capitol Avenue, Suite 4000
 7 Hartford, CT 06106
 8 Phone: (860) 808-5400
 9 Fax: (860) 808-5593
 10 <mailto:brendan.flynn@ct.gov>
 11 *Attorney for Plaintiff State of Connecticut*

12 Ryan Costa (DE Bar No. 5325)
 13 Deputy Attorney General
 14 Delaware Department of Justice
 15 820 N. French Street, 5th Floor
 16 Wilmington, DE 19801
 17 Phone: (302) 683-8811
 18 Fax: (302) 577-6499
 19 Ryan.costa@delaware.gov
 20 *Attorney for Plaintiff State of Delaware*

21 Adam Teitelbaum (DC Bar No. 1015715)
 22 Director, Office of Consumer Protection
 23 Assistant Attorney General
 24 D.C. Office of the Attorney General
 25 Office of Consumer Protection
 26 400 6th Street NW, 10th Floor
 27 Washington, DC 20001
 28 Phone: (202) 741-0764
Adam.Teitelbaum@dc.gov
Attorney for Plaintiff District of Columbia

Patrick Crotty (FL Bar No. 108541)
 Senior Assistant Attorney General
 Miles Vaughn (FL Bar No. 1032235)
 Assistant Attorney General
 Office of the Florida Attorney General
 Consumer Protection Division
 3507 E. Frontage Rd, Suite 325
 Tampa, FL 33607
 Phone: (813) 287-7950
 Fax: (813) 281-5515
patrick.crotty@myfloridalegal.com
miles.vaughn@myfloridalegal.com
*Attorneys for Plaintiff Ashley Moody,
 Attorney General of the State of Florida*

David A. Zisook (GA Bar No. 310104)
 Senior Assistant Attorney General
 Office of the Attorney General of the State
 of Georgia
 2 Martin Luther King Jr. Drive, SE, Ste.
 356
 Atlanta, GA 30334
 Phone: (404) 458-4294
 Fax: (404) 464-8212
dzisook@law.ga.gov
Attorney for Plaintiff State of Georgia

Christopher J.I. Leong (HI Bar No. 9662)
 Deputy Attorney General
 Hawaii Department of the Attorney
 General
 425 Queen Street
 Honolulu, HI 96813
 Phone: (808) 586-1180
 Fax: (808) 586-1205
christopher.ji.leong@hawaii.gov
Attorney for Plaintiff State of Hawaii

1 James J. Simeri (ID Bar No. 12332)
2 *(Pro Hac Vice motion forthcoming)*
3 Consumer Protection Division Chief
4 Idaho Attorney General's Office
5 P.O. Box 83720
6 Boise, ID 83720-0010
7 Phone: (208) 334-4114
8 james.simeri@ag.idaho.gov
9 *Attorney for Plaintiff State of Idaho*

10 Philip Heimlich (IL Bar No. 6286375)
11 Assistant Attorney General
12 Elizabeth Blackston (IL Bar No. 6228859)
13 Consumer Fraud Bureau Chief
14 Office of the Illinois Attorney General
15 500 S. Second Street
16 Springfield, IL 62791
17 Phone: (217) 782-4436
18 philip.heimlich@ilag.gov
19 elizabeth.blackston@ilag.gov
20 *Attorneys for Plaintiff People of the State*
21 *of Illinois*

22 Benjamin Bellus (IA Bar No. AT0000688)
23 William Pearson (IA Bar No. AT0012070)
24 Assistant Attorneys General
25 Office of the Iowa Attorney General
26 1305 E. Walnut St.
27 Des Moines, IA 50319
28 Phone: (515) 242-6536 (Bellus)
(515) 242-6773 (Pearson)
Fax: (515) 281-6771
Benjamin.Bellus@ag.iowa.gov
William.Pearson@ag.iowa.gov
Attorneys for Plaintiff State of Iowa

Nicholas C. Smith (KS Bar No. 29742)
Sarah M. Dietz (KS Bar No. 27457)
Assistant Attorneys General
Consumer Protection Section
Office of the Kansas Attorney General
120 SW 10th Avenue, 2nd Floor
Topeka, KS 66612
Phone: (785) 296-3751
Fax: (785) 291-3699
Nicholas.Smith@ag.ks.gov
sarah.dietz@ag.ks.gov
Attorneys for Plaintiff State of Kansas

Jacob P. Ford (KY Bar No. 95546)
Assistant Attorney General
Office of the Attorney General,
Commonwealth of Kentucky
1024 Capital Center Drive, Ste. 200
Frankfort, KY 40601
Phone: (502) 871-2044
jacobp.ford@ky.gov
Attorney for Plaintiff Commonwealth of
Kentucky

ZaTabia N. Williams (LA Bar No. 36933)
Assistant Attorney General
Office of the Attorney General Liz Murrill
1885 North Third St.
Baton Rouge, LA 70802
Phone: (225) 326-6164
Fax: (225) 326-6499
WilliamsZ@ag.louisiana.gov
Attorney for Plaintiff State of Louisiana

1 Brendan O'Neil (ME Bar No. 009900)
 2 Assistant Attorney General
 3 Office of the Maine Attorney General
 4 6 State House Station
 5 Augusta, ME 04333
 6 Phone: (207) 626-8800
 7 Fax: (207) 624-7730
 8 brendan.oneil@maine.gov
 9 *Attorney for Plaintiff State of Maine*

10 Philip Ziperman (Fed. Bar No. 12430)
 11 Deputy Counsel
 12 Office of the Attorney General
 13 200 St. Paul Place
 14 Baltimore, MD 21202
 15 Phone: (410) 576-6417
 16 Fax: (410) 576-6566
 17 pziperman@oag.state.md.us
 18 *Attorney for Plaintiff Maryland Office of*
 19 *the Attorney General*

20 Carol Guerrero (MA Bar No. 705419)
 21 Assistant Attorney General
 22 Massachusetts Office of the Attorney
 23 General
 24 One Ashburton Place, 18th Floor
 25 Boston, MA 02108
 26 Phone: (617) 963-2783
 27 Fax: (617) 727-5765
 28 <mailto:Carol.Guerrero@mass.gov>
Attorney for Plaintiff Commonwealth of
Massachusetts

Kathy P. Fitzgerald (MI Bar No. P31454)
 Michael S. Hill (MI Bar No. P73084)
 Assistant Attorneys General
 Michigan Department of Attorney General
 Corporate Oversight Division
 P.O. Box 30736
 Lansing, MI 48909
 Phone: (517) 335-7632
 Fax: (517) 335-6755
fitzgeraldk@michigan.gov
Hillm19@michigan.gov
Attorneys for Plaintiff People of the
State of Michigan

Bennett Hartz (MN Bar No. 0393136)
 Assistant Attorney General
 Office of the Minnesota Attorney General
 445 Minnesota Street, Suite 1200
 Saint Paul, MN 55404
 Phone: (651) 757-1235
bennett.hartz@ag.state.mn.us
Attorney for Plaintiff State of Minnesota,
by its Attorney General, Keith Ellison

James M. Rankin (MS Bar No. 102332)
 Jessica D. Jasper (MS Bar No. 106305)
(Pro Hac Vice motion forthcoming)
 Special Assistant Attorneys General
 Mississippi Attorney General's Office
 P.O. Box 220
 Jackson, MS 39205
 Phone: (601) 359-4258 (Rankin)
 (601) 359-3800 (Jasper)
james.rankin@ago.ms.gov
jessica.jasper@ago.ms.gov
Attorneys for Plaintiff Lynn Fitch,
Attorney General State of Mississippi

1 Michael Schwalbert (MO Bar No. 63299)
 2 Assistant Attorney General
 3 Office of the Missouri Attorney General
 4 815 Olive Street, Suite 200
 5 St. Louis, MO 63101
 6 Phone: (314) 340-6816
 7 Fax: (314) 340-7891
michael.schwalbert@ago.mo.gov
Attorney for Plaintiff State of Missouri, ex.
rel. Andrew Bailey, Attorney General

8 Anna Schneider (MT Bar No. 13963)
 9 Special Assistant Attorney General, Senior
 10 Counsel
 11 Andrew Butler (MT Bar No. 53936812)
 12 Assistant Attorney General
 13 Montana Attorney General's Office
 14 Office of Consumer Protection
 15 555 Fuller Avenue
 16 Helena, MT 59601
 17 Phone: (406) 444-4500
Anna.schneider@mt.gov
Andrew.butler@mt.gov
Attorneys for Plaintiff State of Montana

18 Gary E. Brollier (NE Bar No. 19785)
 19 Assistant Attorney General
 20 Office of the Attorney General Michael T.
 21 Hilgers
 22 2115 State Capitol Building
 23 Consumer Protection Division
 24 Lincoln, NE 68509
 Phone: (402) 471-1279
 Fax: (402) 471-4725
gary.brollier@nebraska.gov
Attorney for Plaintiff State of Nebraska

Michelle C. Badorine (NV Bar No. 13206)
 Senior Deputy Attorney General
 Office of the Nevada Attorney General
 Bureau of Consumer Protection
 100 North Carson Street
 Carson City, NV 89701-4717
 Phone: (775) 684-1164
 Fax: (775) 684-1299
MBadorine@ag.nv.gov
Attorney for Plaintiff State of Nevada

Mary F. Stewart (NH Bar No. 10067)
 Assistant Attorney General
 New Hampshire Department of Justice
 Office of the Attorney General
 Consumer Protection and Antitrust Bureau
 33 Capitol St.
 Concord, NH 03301-6397
 Phone: (603) 271-1139
 Fax: (603) 271-2110
Mary.F.Stewart@doj.nh.gov
*Attorney for Plaintiff State of New
 Hampshire*

Deepta Janardhan (NJ Bar No.
 309022020)
 Jeffrey Koziar (NJ Bar No. 015131999)
 Deputy Attorneys General
 New Jersey Office of the Attorney General
 Division of Law
 124 Halsey Street
 Newark, NJ 07101
 Phone: (973) 648-7819
 Fax: (973) 648-4887
Deepta.Janardhan@law.njoag.gov
Jeff.koziar@law.njoag.gov
Attorneys for Plaintiff State of New Jersey

Julie Ann Meade (NM Bar No. 8143)
 Assistant Attorney General
 State of New Mexico Department of
 Justice
 408 Galisteo St.
 Santa Fe, New Mexico 87501
 Phone: (505) 490-4058
 Fax: (505) 490-4883
jmeade@nmag.gov
*Attorney for Plaintiff Raúl Torrez, New
 Mexico Attorney General*

Glenna Goldis (NY Bar No. 4868600)
 Assistant Attorney General
 Office of the New York State Attorney
 General
 28 Liberty Street
 New York, NY 10005
 Phone: (646) 856-3697
Glenna.goldis@ag.ny.gov
*Attorney for Plaintiff Office of the Attorney
 General of the State of New York*

Elin S. Alm (ND Bar No. 05924)
 Christopher Glenn Lindblad (ND Bar
 No. 06480)
 Assistant Attorneys General
 Office of North Dakota Attorney General
 Consumer Protection & Antitrust Division
 1720 Burlington Drive, Suite C
 Bismarck, ND 58504-7736
 Phone: (701) 328-5570
 Fax: (701) 328-5568
mailto:ealm@nd.gov
clindblad@nd.gov
*Attorneys for Plaintiff State of North
 Dakota*

Robert J. Carlson (OK Bar No. 19312)
 Assistant Attorney General
 Office of the Oklahoma Attorney General
 313 N.E. 21st St.
 Oklahoma City, OK 73105
 Phone: (918) 581-2384
 Fax: (405) 522-0085
Robert.Carlson@oag.ok.gov
*Attorney for Plaintiff State of Oklahoma ex
 rel. Attorney General Gentner Drummond*

Jordan M. Roberts (OR Bar No. 115010)
 Senior Assistant Attorney General
 Oregon Department of Justice
 Consumer Protection Division
 100 SW Market St.
 Portland, OR 97201
 Phone: (971) 673-1880
 Fax: (971) 673-1884
jordan.m.roberts@doj.state.or.us
Attorney for Plaintiff State of Oregon

Mark W Wolfe (PA Bar No. 327807)
 Deputy Attorney General
 Pennsylvania Office of Attorney General
 Strawberry Square, 15th Floor
 Harrisburg, PA 17120-0001
 Phone: (717) 772-3558
 Fax: (717) 705-3795
mwolfe@attorneygeneral.gov
*Attorney for Plaintiff Commonwealth of
 Pennsylvania by Attorney General
 Michelle A. Henry*

1 Stephen N. Provazza (RI Bar No. 10435)
 2 Special Assistant Attorney General
 3 Rhode Island Office of the Attorney
 4 General
 5 150 S. Main Street
 6 Providence, RI 02903
 7 Phone: (401) 274-4400, ext. 2476
 8 Fax: (401) 222-1766
 9 sprovazza@riag.ri.gov
 10 *Attorney for Plaintiff State of Rhode*
 11 *Island, by Attorney General Peter*
 12 *Neronha*

13 Kristin Simons (SC Bar No. 74004)
 14 Senior Assistant Attorney General
 15 Danielle Robertson (SC Bar No. 105846)
 16 Assistant Attorney General
 17 South Carolina Attorney General's Office
 18 P.O. Box 11549
 19 Columbia, SC 29211-1549
 20 Phone: (803) 734-6134 (Simons)
 21 (803) 734-8044 (Robertson)
 22 <mailto:ksimons@scag.gov>
 23 danirobertson@scag.gov
 24 *Attorneys for Plaintiff State of South*
 25 *Carolina*

26 Austin C. Ostiguy (TN Bar No. 040301)
 27 Tyler T. Corcoran (TN Bar No. 038887)
 28 Assistant Attorneys General
 Office of the Tennessee Attorney General
 P.O. Box 20207
 Nashville, TN 37202
 Phone: (615) 532-7271 (Ostiguy)
 (615) 770-1714 (Corcoran)
 Fax: (615) 532-2910
austin.ostiguy@ag.tn.gov
tyler.corcoran@ag.tn.gov
Attorneys for Plaintiff State of Tennessee

David Shatto (Fed. Bar No. 3725697; TX
 Bar No. 24104114)
 Assistant Attorney General
 Attorney General for the State of Texas
 Office of the Attorney General
 P.O. Box 12548 (MC-010)
 Austin, TX 78711
 Phone: (512) 463-2185
 Fax: (512) 473-9125
David.Shatto@oag.texas.gov
Attorney for Plaintiff State of Texas

Kevin McLean (UT Bar No. 16101)
 Assistant Attorney General
 Utah Attorney General's Office
 160 East 300 South, 5th Floor
 P.O. Box 140872
 Salt Lake City, UT 84114-0872
 Phone: (801) 366-0310
 Fax: (801) 366-0315
kmclean@agutah.gov
Attorney for Plaintiff Utah Division of
Consumer Protection

Jill Abrams (VT Bar No. 4944)
 (Pro Hac Vice motion forthcoming)
 Office of the Vermont Attorney General
 109 State Street
 Montpelier, VT 05609-1001
 Phone: (802) 828-3171
 Fax: (802) 304-1014
Jill.Abrams@vermont.gov
Attorney for Plaintiff State of Vermont

1 Geoffrey L. Ward (VA Bar No. 89818)
2 Senior Assistant Attorney General
3 Office of the Attorney General of Virginia
4 202 N. Ninth St.
5 Richmond, VA 23219
6 Phone: (804) 371-0871
7 Fax: (804) 786-0122
8 gward@oag.state.va.us
Attorney for Plaintiff Commonwealth of
Virginia, ex rel. Jason S. Miyares,
Attorney General

9 Alexandra Kory (WA Bar No. 49889)
10 Mina Shahin (WA Bar No. 46661)
11 Assistant Attorneys General
12 Washington State Attorney General's
13 Office
14 800 Fifth Avenue, Suite 2000
15 Seattle, WA 98104
16 Phone: (206) 516-2997 (Kory)
17 (206) 326-5485 (Shahin)
18 Fax: (206) 464-6451
19 Alexandra.Kory@atg.wa.gov
20 Mina.Shahin@atg.wa.gov
21 *Attorneys for Plaintiff State of Washington*

Ashley T. Wentz (WV Bar No. 13486)
Assistant Attorney General
West Virginia Attorney General's Office
Consumer Protection/Antitrust Division
P.O. Box 1789
Charleston, WV 25326
Phone: (304) 558-8986
Fax: (304) 558-0184
Ashley.T.Wentz@wvago.gov
Attorney for Plaintiff State of West
Virginia ex rel. Patrick Morrissey, Attorney
General

Gregory A. Myszkowski (WI Bar No.
1050022)
Assistant Attorney General
Wisconsin Department of Justice
P.O. Box 7857
Madison, WI 53707-7857
Phone: (608) 266-7656
Fax: (608) 294-2907
myszkowskiga@doj.state.wi.us
Attorney for Plaintiff State of Wisconsin

Benjamin M. Peterson (WY Bar No. 8-
6513)
Assistant Attorney General
Wyoming Office of the Attorney General
Kendrick Building
2320 Capitol Avenue
Cheyenne, Wyoming 82002
Phone: (307) 777-8240
Fax: (307) 777-3435
benjamin.peterson2@wyo.gov
Attorney for Plaintiff State of Wyoming